

ORIGINAL
FILED
07 AUG -6 PM 3:19
RECEIVED
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 JUSTIN X. WANG (CSB #166183)
2 **BAUGHMAN & WANG**
3 111 Pine Street, Suite 1350
4 San Francisco, California 94111
5 Telephone: (415) 576-9923
6 Facsimile: (415) 576-9929

7 Attorney for Plaintiff
8 Nargis NIAZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MMC

8 Nargis NIAZ

C 07 4030
Case No.

9
10 Plaintiff,

11 vs.

COMPLAINT FOR WRIT IN THE
NATURE OF MANDAMUS

12 MICHAEL CHERTOFF, Secretary of the
13 Department of Homeland Security;
14 CONDOLEEZZA RICE, Secretary of State

15 Defendants.

"Immigration Case"

16 Plaintiff Nargis NIAZ by and through her undersigned attorney, sues Defendants and states
17 as follows:

18 1. This action is brought against the Defendants to compel action on one Immigrant Petition for
19 Relative Fiance(E), or Orphan (Form I-130), properly filed by the Plaintiff. The petition remains
20 within the jurisdiction of the Defendants, who have improperly withheld action on said petition to
21 Plaintiff's detriment.

22 **PARTIES**

23
24 2. Plaintiff Nargis NIAZ is a U.S. Citizen. On December 8, 2006, Plaintiff Nargis NIAZ
25 field an immigration petition (I-130) with the USCIS California Service Center on behalf of her
26 husband Farrukh YUSUPOV. The petition was approved on February 7, 2007 (**Exhibit 1:**
27 **Approval Notice of I-130).**
28

1 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security
2 (DHS), and this action is brought against him in her official capacity. He is generally charged
3 with enforcement of the Immigration and Nationality Act, and is further authorized to delegate
4 such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.

5
6 4. Defendant Condoleezza Rice is the Secretary of State, and this action is brought against
7 her in her official capacity. She is generally charged with visa and travel documents issuance
8 under the INA.

9 JURISDICTION

10 5. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,
11 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

12 VENUE

13
14 6. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action
15 against officers and agencies of the United States in their official capacities, brought in the
16 District where the Plaintiff resides if no real property is involved in the action.

17 EXHAUSTION OF REMEDIES

18
19 7. Plaintiff has exhausted her administrative remedies.

20 CAUSE OF ACTION

21 8. Plaintiff Nargis NIAZ married her husband Farrukh YUSUPOV on September 30, 2006 in
22 Tashkent, Uzbekistan. On December 8, 2006, Plaintiff Nargis NIAZ filed an I-130 immigration
23 petition with the USCIS California Service Center (CSC) on behalf of her husband. The petition
24 was approved on February 7, 2007. (**Exhibit 1: Approval Notice of I-130**). Both CSC and the
25 National Visa Center (NVC) claim that they do not have the petition (**Exhibit 2: Inquiries with**
26 **and Responses from the CSC and NVC**).

27
28 9. Defendants' inaction has effectively stopped the further processing of Plaintiff's

1 immigration visa petition for almost six months from the date of its approval. Plaintiff Nargis
2 NIAZ 's I-130 petition has now remained pending for further visa process for almost six months
3 from the date of the I-130 approval.

4 10. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance
5 with the law. Defendants unreasonably have delayed in and have refused to adjudicate Plaintiff
6 Nargis NIAZ 's I-130 petition for almost six months from the date of the I-130 approval, thereby
7 depriving her of the right to a decision on her husband's immigrant visa petition and the peace of
8 mind to which Plaintiff is entitled.

9 11. Plaintiff has been damaged by the failure of Defendants to act in accord with their duties
10 under the law.

11 (a) Plaintiff has been damaged by simply being deprived of the further processing of
12 her I-130 petition for almost six months. Plaintiff has also been damaged by simply
13 being separated from her husband for almost eight months since Plaintiff was last
14 with her husband, causing extreme emotional strain on both the Plaintiff and her
15 husband. Plaintiff has also been unable to plan or pursue a future course of action
16 in the United States due to the pendency of her husband's immigrant visa
17 application.

18 15. The Defendants, in violation of the Administrative Procedures Act Mandamus Act, 5
19 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff Nargis
20 NIAZ 's I-130 petition, and have failed to carry out the adjudicative functions delegated to them
21 by law with regard to Plaintiff's case.

22 PRAYER

23 16. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully
24 prays that the Defendants be cited to appear herein and that, upon due consideration, the Court
25

1 enter an order:

- 2 (a) requiring Defendants to expeditiously process Plaintiff Nargis NIAZ's immigrant
3 visa petition, including the issuance of the immigration visa for Plaintiff's
4 husband;
- 5 (b) awarding Plaintiff reasonable attorney's fees under the Equal Access to Justice
6 Act;
- 7 (c) granting such other relief at law and in equity as justice may require.

8
9 Dated: August 3, 2007

Respectfully submitted,

10
11 

12 Justin X. Wang, Esq.

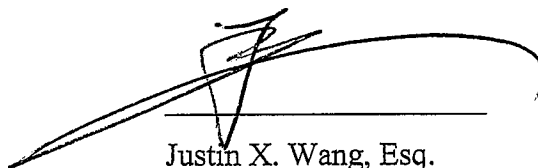
13 Attorney for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATION OF INTERESTED ENTITIES OR PERSON

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: August 3, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Justin X. Wang', is written over a horizontal line.

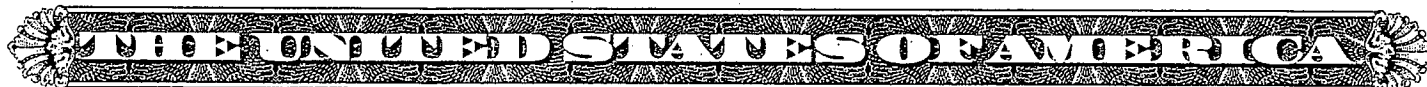
Justin X. Wang, Esq.

Attorney for Plaintiff

LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	Approval Notice of the I-130 petition
2	Inquiries with and Responses from the CSC and NVC

Ex. 1



RECEIPT NUMBER WAC-07-047-50567		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE (E), OR ORPHAN
RECEIPT DATE December 8, 2006	PRIORITY DATE December 8, 2006	PETITIONER NIAZ, NARGIS
NOTICE DATE February 7, 2007	PAGE 1 of 1	BENEFICIARY YUSUPOV, FARRUKH
JUSTIN X. WANG BAUGHMAN & WANG RE: NARGIS NIAZ 111 PINE ST SAN FRANCISCO CA 94111		Notice Type: Approval Notice Section: Husband or wife of U.S. Citizen, 201(b) INA

The above petition has been approved. We have sent the original visa petition to the Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.

The NVC will contact the person for whom you are petitioning (beneficiary) concerning further immigrant visa processing steps.

If you have any questions about visa issuance, please contact the NVC directly. However, please allow at least 90 days before calling the NVC if your beneficiary has not received correspondence from the NVC. The telephone number of the NVC is (603) 334-0700.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
P. O. BOX 30111
LAGUNA NIGUEL CA 92607-0111
Customer Service Telephone: (800) 375-5283



Ex. 2

Small Business Home

YAHOO! SMALL BUSINESS
Email

Welcome, ling@lawbw.com
[Sign Out, My Account]

Search
the Web

Search

Mail Home - Help

Mail

Addresses

Calendar

Notepad

Mail Options - Manage My Services

Check Mail

Compose

Search Mail

Search the Web

Mail Accounts

lawbw.com
yahoo.com

Folders

[Add - Edit]

Inbox (1)

Draft

Sent

Bulk (2) [Empty]

Trash [Empty]

Search Shortcuts

My Photos

My Attachments

[Previous](#) | [Next](#) | [Back to Messages](#)

Delete

Reply

Forward

Spam

Move...

This message is not flagged. [Flag Message - Mark as Unread]

[Printable View](#)

Subject: WAC-07-047-50567

Date: Mon, 21 May 2007 08:52:34 -0400

From: "NVC Inquiry" <NVCInquiry@state.gov> [Add to Address Book](#) [Add Mobile Alert](#)

To: "Ling Miao" <ling@lawbw.com>

Dear Sir or Madam,

The National Visa Center has received your inquiry regarding WAC0704750567. After searching our records, no information was found regarding this case. Please contact U.S. Citizenship and Immigration Services (CIS- formerly known as INS) to verify the status of this petition.

Regards,
National Visa Center
ACB

From: Ling Miao [mailto:ling@lawbw.com]
Sent: Wednesday, May 16, 2007 7:00 PM
To: NVC Inquiry
Subject: WAC-07-047-50567

RE: WAC-07-047-50567?Case Type: I-130
Petitioner: Nargis NIAZ (DOB: 19AUG1987)
Beneficiary: Farrukh YUSUPOV (DOB: 12FEB1985)
?Dear Officer:
?Our office represents the petitioner in her petition for her alien spouse.?The petition was approved on February 7, 2007.?So far we still have not heard anything from the NVC regarding further procedures.
?Please advise us of the status of the case.

Ling Miao
Legal Assistant
BAUGHMAN & WANG
111 Pine Street, Suite 1350
San Francisco, CA 94111
Tel: 415-576-9923
Fax: 415-576-9929

Delete

Reply

Forward

Spam

Move...

[Previous](#) | [Next](#) | [Back to Messages](#)

[Save Message Text](#) | [Full Headers](#)

U.S. Department of Homeland Security
P. O. Box 30111
Laguna Niguel, CA 92607-0111



U.S. Citizenship
and Immigration
Services

JUSTIN WANG, ESQ.
RE: NARGIS NIAZ
111 PINE ST. SUITE 1350
SAN FRANCISCO, CA 94111

DATE May 22, 2007

A NUMBER _____

WAC # 07-04750567

The following is provided in response to your inquiry:

The California Service Center is in receipt of your request.

Please be advised that this office does not retain an I-130 petition once a decision is made. The petition will either be forwarded to the National Visa Center (NVC) for consulate processing or will be held at a storage facility until such time as an I-485 adjustment application is filed by the beneficiary with the appropriate local district office.

☒ Review of your request suggests that you should contact the National Visa Center at:

FAX: (603) 334-0791

BAUGHMAN & WANG

Attorneys at Law
111 Pine Street, Suite 1350
San Francisco, CA 94111
Telephone: (415) 576-9923
Facsimile: (415) 576-9929
E-mail: justin@lawbw.com

FAX COVER SHEET

TO: NVC

FROM: Justin X. Wang, Esq.

DATE: 6/6/2007

RE: WAC-07-047-SDSG7 Petitioner: MAZ, Nargis
Beneficiary: MUSLIPOV, Farrukh

Fax No: 603-334-0791

Pages: _____ (including this page)

I-130
The above case was approved on Feb. 7, 2007. So far,
we are still waiting for the package from NVC. On
May 21, 07, NVC informed me that "no information
was found regarding this case," and suggested that I
contact CIS. On May 22, 07, CIS wrote back saying
that they do "not retain an I-130 petition once a decision
is made," & suggested that we contact you by fax.
Please let us know the status of the case. Both Petitioner
& the Beneficiary are tormented by their long
separation, especially not knowing when it will end.



United States Department of State
Portsmouth Consular Center

National Visa Center
32 Rochester Ave.
Portsmouth, NH 03801-2909

Date: 6/18/2007

Baughman and Wang
Law Office
111 Pine St, Ste 1350
San Francisco, CA 94111

Dear Sir or Madam:

The National Visa Center (NVC) has received your inquiry. We have searched our records and are unable to locate your petition.

- ☐ Your inquiry/application must be directed to the U.S. Citizenship and Immigration Services (CIS-formerly known as INS) where the petition was originally filed. You may contact CIS via telephone at (800) 375-5283 or visit the CIS web site for additional information at www.uscis.gov.
- ☐ Your inquiry/application must be directed to the U.S. Embassy/Consulate General in the applicant's country of residence.
- ☐ Your inquiry regarding the Diversity Lottery program should be directed to the Kentucky Consular Center. You may contact them at (606) 526-7500 or KCCDV@STATE.GOV.
- ☒ Please provide more information such as:
 - ☒ CIS receipt number
 - ☒ NVC case number
 - ☒ Beneficiary's name (if the beneficiary is of Hispanic origin, be sure to include both paternal and maternal last names)
 - ☒ Beneficiary's date of birth and country of birth.
 - ☒ Please include a copy of the Notice of Action that indicates the petition has been approved and was sent to the NVC. If the petition has not been approved, or you do not have a copy of the Notice of Action, please contact the U.S. Citizenship and Immigration Services (CIS- formerly known as INS) office where the petition was originally filed.

Other: _____

BAUGHMAN & WANG

Attorneys at Law

111 Pine Street, Suite 1350

San Francisco, CA 94111

Telephone: (415) 576-9923

Facsimile: (415) 576-9929

E-mail: justin@lawbw.com**FAX COVER SHEET**

TO:

NVC

FROM:

Justin K. Wang

DATE:

6/26/07

RE:

WAC-07-047-50567

Fax No:

603-334-0791

Pages:

3

(including this page)

Petitioner: NIAZ, NargisBeneficiary: YUSUPOV, Farrukh DOB: 02/12/1985
Country of birth: UzbekistanThe above case was approved on 2/7/2007.So far, we are still waiting for the package from
NVC.Per your request, I am sending you a copy of
the I-130 Approval Notice, on which, it says
that they "have sent the original visa petition to the NVC."Please expedite the processing of the case.Please also advise us the status of the case.

The information contained in this fax message is intended only for the person or entity to which it is addressed, and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that you have received this message in error and any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the United States Postal Service. Thank You.



United States Department of State
Portsmouth Consular Center

National Visa Center
32 Rochester Ave.
Portsmouth, NH 03801-2909

Date: 6/18/2007

Baughman and Wang
Law Office
111 Pine St, Ste 1350
San Francisco, CA 94111

Dear Sir or Madam:

The National Visa Center (NVC) has received your inquiry. We have searched our records and are unable to locate your petition.

- ☐ Your inquiry/application must be directed to the U.S. Citizenship and Immigration Services (CIS-formerly known as INS) where the petition was originally filed. You may contact CIS via telephone at (800) 375-5283 or visit the CIS web site for additional information at www.uscis.gov.
- ☐ Your inquiry/application must be directed to the U.S. Embassy/Consulate General in the applicant's country of residence.
- ☐ Your inquiry regarding the Diversity Lottery program should be directed to the Kentucky Consular Center. You may contact them at (606) 526-7500 or KCCDV@STATE.GOV.
- ☒ Please provide more information such as:

☒ CIS receipt number **WAC-07-047-50567**

☒ NVC case number **None**

☒ Beneficiary's name (if the beneficiary is of Hispanic origin, be sure to include both paternal and maternal last names)

YUSUPOV, Farrukh

☒ Beneficiary's date of birth and country of birth. **02/12/1985**

Uzbekistan

☒ Please include a copy of the Notice of Action that indicates the petition has been approved and was sent to the NVC. If the petition has not been approved, or you do not have a copy of the Notice of Action, please contact the U.S. Citizenship and Immigration Services (CIS- formerly known as INS) office where the petition was originally filed.

Other: _____



United States Department of State
Portsmouth Consular Center

National Visa Center
32 Rochester Ave.
Portsmouth, NH 03801-2909

Date: 7/12/2007

BAUGHMAN & WANG
111 PINE ST STE 1350
SAN FRANCISCO CA
94111

Dear Sir or Madam:

The National Visa Center (NVC) has received your inquiry. We have searched our records and are unable to locate your petition.

- ☒ Your inquiry/application must be directed to the U.S. Citizenship and Immigration Services (CIS-formerly known as INS) where the petition was originally filed. You may contact CIS via telephone at (800) 375-5283 or visit the CIS web site for additional information at www.uscis.gov.
- ☐ Your inquiry/application must be directed to the U.S. Embassy/Consulate General in the applicant's country of residence.
- ☐ Your inquiry regarding the Diversity Lottery program should be directed to the Kentucky Consular Center. You may contact them at (606) 526-7500 or KCCDV@STATE.GOV.
- ☐ Please provide more information such as:
 - ☐ CIS receipt number
 - ☐ NVC case number
 - ☐ Beneficiary's name (if the beneficiary is of Hispanic origin, be sure to include both paternal and maternal last names)
 - ☐ Beneficiary's date of birth and country of birth.
 - ☐ Please include a copy of the Notice of Action that indicates the petition has been approved and was sent to the NVC. If the petition has not been approved, or you do not have a copy of the Notice of Action, please contact the U.S. Citizenship and Immigration Services (CIS- formerly known as INS) office where the petition was originally filed.

Other: _____